



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN

DIRECTOR

February 1, 1995
AO-95-03

Patrick J. Ward, Town Clerk
Town of Brookline
333 Washington Street
Brookline, MA 02147

Re: Persons seeking election to town meeting

Dear Mr. Ward:

This letter is in response to your January 3, 1995 request for an advisory opinion regarding the effect of the campaign finance law, M.G.L. c. 55, on persons seeking election to a representative town meeting.

You have asked whether the elected office of Town Meeting Member is considered an "elective public office" and whether such members are "subject to any of the provisions" of the campaign finance law. Specifically, you have referred to section 5A to M.G.L. c. 55, which was added to the campaign finance law by ch. 43 of the Acts of 1994. Section 5A states that "[n]o candidate or individual holding elective public office shall establish, finance, maintain, control or serve as a principal officer of a political action committee..."¹ You state that many of the political action committees which have filed with your office have town meeting members as principal officers.

Candidates for town meeting membership are not required to report campaign finance activity. See section 18 of chapter 55, which generally requires all candidates for public office to file campaign reports, but specifically excludes candidates for representative town meeting from the requirement. It follows that if such candidates are not required to file

¹ Section 5A does not prohibit candidates or elective office holders from serving as officers of so-called "people's committees." A committee which has been in existence for six months, has contributed to five or more candidates, only accepts contributions from individuals, and does not receive more than \$100 per year from any individual may be a people's committee. See M.G.L. c. 55, s. 1 and IB-94-02.

reports disclosing their campaign finance activity, that the legislature intended to exempt them from other related provisions of the campaign finance law.²

Moreover, a review of M.G.L. c. 43A, the statute defining the operation of representative town meetings, is relevant to understanding the appropriate extent of the obligations under the campaign finance law of candidates for town meeting. The number of town meeting members in a representative town meeting is statutorily required to be approximately 240 per town, but may be larger if a larger number is specified in the town's by-laws. See M.G.L. c. 43A, s. 4. Unlike candidates for town-wide office, e.g., selectman or school committee member, candidates for town meeting membership need obtain only ten signatures on nomination papers to appear on the ballot. See M.G.L. c. 43A, s. 6. In addition, if elected, members are not involved in holding office in a conventional sense, since they only participate in an annual town meeting held in February, March, April or May. Although other meetings may be held at such times as the selectmen may order, town meeting members do not sit in an extended session analogous to the session of the state legislature nor are the responsibilities of a town meeting member analogous to those of town-wide office holders or even district office holders in a city, e.g., district councillor. See M.G.L. c. 39, s. 9. Finally, in the vast majority of Massachusetts towns, the town meeting is open to all voters. A relatively small number of larger towns have chosen to use representative town meetings, and to regulate the participation of residents of a town only if the town has chosen to use a representative town meeting would not be consistent with the intent of the campaign finance law.

Most of the provisions contained within M.G.L. c. 55 relate to the disclosure and limitation of contributions, expenditures, and liabilities of candidates and political committees (which I will call "the disclosure and limitation requirements"). Other provisions, e.g., sections 13 through 17, are designed to limit the involvement of public employees in the political process and to provide protections to public employees and others from political coercion. The policy considerations underlying sections 13 through 17, i.e., the avoidance of corruption or the appearance of corruption in the public sector, are different than the concerns underlying the disclosure and limitation requirements. Moreover, as noted below, these provisions generally apply not to candidates but to "persons employed by the commonwealth," "persons in the service of the commonwealth," or persons in buildings occupied for state, county or municipal purposes. In other words, sections 13 through 17 have broader application than other portions of the law.

After considering the language and apparent objectives of M.G.L. c. 55 and M.G.L. c. 43A, I conclude that town meeting

² As will be discussed in more detail below, however, town meeting members are subject to M.G.L. c. 55, s. 15 and, depending on circumstances not presented in your letter, would be subject to other provisions of the campaign finance law.

members are not, because of such membership, subject to the disclosure and limitation requirements of the campaign finance law.

This office views section 5A as relating primarily to the disclosure and limitation requirements of the campaign finance law.³ As such, it is our opinion that town meeting members are not "elective public officers" within the context of M.G.L. c. 55, s. 5A. Moreover, given the exemption in section 18(a), and the lack of reference to town meeting candidates in s. 5A or elsewhere in the campaign finance law, there is no indication that the legislature intended to include town meeting members within s. 5A's prohibition. Finally, each town in the commonwealth which has a representative town meeting has approximately 240 town meeting members, and to flatly prohibit their involvement as officers in political action committees, solely because of their limited role as town meeting members, would be to impose a substantial constraint on their political activity without a sufficient statutory basis.

Although town meeting members do not need to report their campaign finance activity and may be officers of PACs, members are subject to M.G.L. c. 55, s. 15, since they are "persons in the service of" a town. As such, they may not "give or deliver to an officer, clerk or [other] person in said service, . . . any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever." They may, however, give or deliver contributions to a political committee organized on behalf of a candidate, even if the candidate is a person in the service of the commonwealth or one of its subdivisions. See Opinion of the Attorney General, October 27, 1964.

In addition, town meeting members, like other persons, are subject to sections 14, 16 and 16B. They may not solicit or receive contributions in a public building. See M.G.L. c. 55, s. 14. Moreover, they may not compel others to provide political services or contributions. See M.G.L. c. 55, s. 16 and s. 16B.

Finally, candidates for town meeting membership, and members of a town meeting, may be subject to other provisions of the campaign finance law based on facts other than their candidacy or participation in a town meeting. For example, a candidate for town meeting member, if otherwise employed for compensation by the commonwealth or any of its subdivisions, would be subject to M.G.L. c. 55, s. 13, which prohibits

³ Prior to the enactment of ch. 43 of the Acts of 1994, any candidate could establish and control a political action committee to raise funds for ultimate distribution to other candidates in amounts exceeding the candidate's limit, e.g., although a legislative candidate's committee would be limited to contributing \$100 to another candidate, his multi-candidate or political action committee could contribute \$1,000. See M.G.L. c. 55, s. 6.

solicitation or receipt of contributions.⁴ In the latter instance, however, a member could ask supporters, friends or relatives to solicit and receive contributions on his behalf.

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55. Please do not hesitate to contact the office if you have any additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan".

Michael J. Sullivan
Director

MJS/cp

⁴ Town meeting members are not compensated for their participation in town meetings and therefore are not subject to the prohibitions of section 13, provided they are not otherwise employed for compensation by the commonwealth or any of its subdivisions. See M.G.L. c. 43A, s. 5.